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ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission)
On Its Own Motion)
-vs-)
Central Illinois Light Company)
)
Reconciliation of revenues collected under)
Coal Tar riders with prudent costs associated)
with coal tar clean-up expenditures.)

Docket No. 90-0437
CLERK'S OFFICE

SUGGESTED ORDER

By the Commission:

Nature of Proceeding: Procedural History

The Illinois Commerce Commission ("Commission"), on its own motion, entered an order commencing the above-referenced reconciliation proceeding. In the order, Central Illinois Light Company ("CILCO" or "Company") was directed to present evidence reconciling the revenues collected under its coal tar rider with prudent costs associated with coal tar clean-up expenditures for the year 1999.

Pursuant to proper notice, hearings were held in this matter before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois. Appearances were entered by CILCO, through its counsel, and by the Commission Staff ("Staff"). Testimony was presented by CILCO and Staff. At the conclusion of the hearings, the record was marked "Heard and Taken." The Company submitted a Suggested Order, with which Staff concurred.

Background: Dockets 90-0127 and 91-0080 through 91-0095; Riders TAR

In Docket No. 90-0127, in an Order on Rehearing entered August 2, 1991, CILCO was authorized to file tariffs to recover prudently incurred coal tar clean-up costs from CILCO's gas customers in a manner consistent with the determinations made in the Order on Rehearing. Pursuant to that Order, CILCO filed a new gas tariff, entitled Rider TAR (CILCO's "first Rider TAR"), which provided for the recovery of prudently incurred coal tar clean-up expenses paid by CILCO to outside vendors.

CILCO's first Rider TAR became effective September 6, 1991, and provided for a recovery period ending December 31, 1992 for clean-up expenses incurred before the effective date of the

rider and deferred until that time, plus expenses to be incurred from the date of the rider through December 31, 1992.

In Docket Nos. 91-0080 through 91-0095 (cons.), the Commission initiated a proceeding to consider issues related to the ratemaking treatment of costs that have been or will be incurred by Illinois gas and electric utilities in connection with environmental remediation arising from the operation and decommissioning of manufactured gas plants ("MGPs"). All gas and electric utilities were named as parties in the initiating order.

On September 30, 1992, the Commission entered a final order in the consolidated proceeding. The Commission found there should be a presumption that MGPs were properly operated and retired; that utilities could recover the prudently-incurred costs of environmental remediation arising from the operation and decommissioning of MGPs; that the preferable, but not exclusive means of recovery was through a rider with a prudence review; and that a sharing of clean-up costs between ratepayers and shareholders should be achieved by requiring that costs be amortized over five years with no recovery of carrying costs on the unrecovered balance.

Regarding the preference for use of a rider, the Commission stated in part that given the wide variations in and the difficulties in making forecasts of the scope, costs and timing of coal tar investigation and remediation activities, riders can generally be expected to provide a more accurate and efficient means of tracking costs and matching such costs with recoveries than would be achieved by base rate recovery methods.

In its Order of September 30, 1992, the Commission found that rider mechanisms should be subject to an annual reconciliation with a prudence review. The Commission explained that a rider which lacks a prudence review does not provide a sufficient means of ensuring that the utility's clean-up activities and costs were necessary or cost effective, and should not be implemented. The Commission further stated on page 81 that in order to properly assess the necessity for and reasonableness of a utility's remediation costs and activities, the standards to be applied in the review thereof shall include those guidelines identified on pages 78-79 of the Order, as well as the other guidelines found appropriate in the Order. The four guidelines on pages 78-79 are:

- (1) reasonable and appropriate business standards;
- (2) the requirements of other relevant state and/or federal authorities;
- (3) minimization of costs to ratepayers, consistent with safety, reliability and quality assurance; and
- (4) based on facts and knowledge the Company knew or reasonably should have known at the time the expenditures were made.

On page 84 of the Order, the Commission also found that questions relating to a utility's interaction with the Illinois Environmental Protection Agency ("IEPA" or "Agency") are relevant considerations in the prudency review process. The September 30, 1992 Order further provides, on page 48, that utilities' actions relating to their pursuit of recovery from insurers and potentially responsible parties ("PRPs"), and the costs and results thereof, are proper subjects of attention in future proceedings.

On May 31, 1994, CILCO filed a revised Rider TAR ("second Rider TAR") which provided for recovery of each year's coal tar clean-up costs ratably over a five-year period, with no recovery of carrying costs on the unrecovered balance.

The Commission's Order in 91-0080 through 91-0095 (Cons.) was appealed by various parties. In an opinion issued on April 20, 1995, the Illinois Supreme Court held that "the decision of the Commission to require utilities to share the statutorily imposed costs of coal-tar remediation was 'not supported by substantial evidence based on the entire record of evidence'", reversed the judgment of the Appellate Court regarding the "sharing portion of the order," and remanded "that portion of the order to the Commission to enter an order consistent with [its] opinion." *Citizens Utility Board v. Commerce Comm'n*, 166 Ill.2d 111, 651 N.E.2d 1089, 209 Ill.Dec. 641 (1995). The Supreme Court rejected all other challenges to the Commission's Order of September 30, 1992.

On November 21, 1995, the Commission entered an Order on Remand. In that Order the Commission found that carrying charges on prudently incurred remediation costs should accrue from the date of the Supreme Court's opinion to the extent that such costs are otherwise eligible for recovery under the Order of September 30, 1992 and are accrued but unrecovered on and after April 20, 1995. The Commission stated that the utility's after-tax cost of capital was the appropriate carrying charge rate for remediation costs. In other respects, it affirmed and adopted the determinations made in the September 30, 1992 Order relating to riders and other recovery methods.

CILCO filed a revised rider ("third Rider TAR"), effective November 1, 1995, which reinstated the one-year recovery procedures contained in CILCO's first Rider TAR, and which added new provisions in response to issues raised by the Staff in the proceeding in 94-0135 relating to over-recoveries and under-recoveries under the Rider. CILCO's first Rider TAR, the second Rider TAR and the third Rider TAR all contained requirements that CILCO reconcile the net amounts recovered through Factor TAR during the respective recovery periods with the actual expenses prudently incurred for coal tar clean-up, and that any over-recovery or under-recovery be refunded or recovered over 12 months through a reconciliation factor beginning on April 1 immediately following the end of the recovery period.

CILCO's Rider; Reconciliation for 1999

As explained above, CILCO recovers coal tar site investigation and remediation costs through Rider TAR. The reconciliations of revenues collected through the original Rider TAR with coal tar investigation and remediation expenditures through December 31, 1998 were the subjects of

proceedings and Commission Orders in Docket 94-0135, Docket Nos. 96-0009, 96-0205 and 97-0218 (cons.), and Docket Nos. 98-0292 and 99-0336 (cons).

The instant proceeding involves a reconciliation for calendar year 1999. In this docket, CILCO's witness testified that in order to establish charges under the rider, the Company estimated total MGP investigation and remediation expenditures as part of its annual operating budget.

With certain exceptions, the Rider TAR factor is applied to total throughput of sales gas and gas transportation on a per therm basis. To calculate the factor, gas base rate revenues are projected by rate class. Resulting class percentages are applied to the estimated clean-up costs to arrive at a cost per rate class, which is then divided by projected therms to calculate a Factor TAR for each class.

For the calendar year being reviewed in this proceeding, 1999, actual MGP expenditures were compared to revenues collected from customers in exhibits presented by CILCO. CILCO Exhibit 1.1, Attachment 2, shows cumulative MGP costs through December 31, 1999 and MGP costs for 1999 by MGP site. Attachment 3 of CILCO Exhibit 1.1 shows the cumulative total of amounts collected for periods through December 31, 1999, including insurance recoveries. As noted above, reconciliations of amounts through 1998 were approved in Docket 94-0135, Dockets 96-0009, 96-0205 and 97-0218 (cons.), and Docket Nos. 98-0292 and 99-0336 (cons).

MGP expenditures were \$6,550,516 (including carrying charges) through December 31, 1998, and \$1,509,735 for 1999, totaling \$8,060,251 as of December 31, 1999.

CILCO collected \$1,435,591 through its Rider and from its insurance carriers for costs during the year ended December 31, 1999, and it recovered \$117,718 for the under-recovery for 1998 approved in Docket 99-0336.

As of December 31, 1999, total recoveries for all periods were \$7,766,996, resulting in a net under-recovery amount of \$293,255 to be collected over the period of April 1, 2000 through March 31, 2001, or such shorter period as is necessary to trigger a reconciliation factor of .01 cents per therm or greater for all three rate classes. This amount consists of the 1999 under-recovery of \$74,145 plus an under-recovery balance of \$219,110 from prior periods.

As indicated above, the reconciliation of recoveries and expenditures includes insurance recoveries. For rider purposes, these recoveries are treated as an offset to expenditures. CILCO's witness described the Company's efforts to seek reimbursement from insurance carriers for the costs incurred in the MGP investigation and remediation. In 1997, CILCO filed a lawsuit against various insurance companies for recovery of MGP damages. CILCO has settled its claims against two of the insurance carriers and two insurance companies remain in the lawsuit. A trial date for the case has been postponed pending the disposition of a summary judgment motion.

Having reviewed the record, and subject to the determinations made herein below, the Commission finds that the method used by CILCO and Staff in reconciling recoveries and expenditures for 1999 is appropriate, and that the reconciliations, as calculated in CILCO Exhibit 1.1 are correct.

Nature and Scope of Remediation Activities and Expenditures; Prudence Standards

CILCO witness Stephen Underwood testified regarding the nature and scope of the Company's remediation activities and expenditures. The witness identified four MGP sites where CILCO has incurred or may incur costs for remediation activities such as remedial investigations, risk assessments, feasibility studies, interim remedial actions, groundwater monitoring, program and project management, site remediation and project oversight by the IEPA. Mr. Underwood stated that CILCO previously owned a fifth site that was sold in 1993.

CILCO's original MGP site investigation and remedial management program was conducted in four phases. Phase I involves historical records research and an on-site inspection to determine whether the site poses any immediate threat to human health or the environment. Phase II entails risk assessment and invasive and non-invasive sampling to determine the types and extent of contamination. Phase III involves a feasibility study for the site, including both technology and least cost considerations. Phase IV is the implementation of the actual remediation activities determined to be necessary at each site.

Mr. Underwood testified that subsequent to the development of the four-phase approach, the State of Illinois adopted the Tiered Approach to Corrective Action Objectives ("TACO") regulations. He said the IEPA has approved the Company's request to utilize the TACO approach. Mr. Underwood stated that the TACO program specifically outlines requirements to be utilized in the site investigation and remediation process, particularly with respect to the feasibility study. He said that one of the objectives is to carry out the remediation at a lower cost than would be incurred under the original four step plan. With regard to the IEPA's involvement in CILCO's MGP site work, the CILCO witnesses testified that the IEPA reviews, in detail, all phases of CILCO's MGP site work. He said the IEPA has accepted CILCO's plan to proceed with site work on a one site at a time basis.

Mr. Underwood testified that CILCO follows appropriate procedures to secure competitive bids for the work that is performed at the MGP sites. He said CILCO also has its staff monitor all work to ensure that it is done in accordance with appropriate standards. In his view, the Company's expenditures met the prudence standards set forth in Dockets 91-0080 through 91-0095 (cons.).

CILCO's witness described the nature and status of the investigation, remediation and monitoring activities at the sites for 1999. Subject to continued monitoring and other post-remediation activities, the remediation of one site was completed in 1992. For this site, the Company received a final No Further Remediation letter from the IEPA on January 27, 2000. Mr. Underwood said Phase II and Phase III activities had been performed at a second site, and that IEPA

had approved the Remediation Action Plan for the site. On February 9, 1999, the IEPA issued a No Further Remediation Letter for the site. A Phase I report has been completed for a third site, and Phase II preliminary investigation activities including test pits, monitor wells and samples, have been performed. Mr. Underwood testified that CILCO began incurring costs for the preliminary investigation in 1999, and is consulting with a prospective owner of the property in order to participate in the IEPA Site Remediation Program. A fourth site is in early research and investigation stage, and CILCO indicated that it does not expect to begin Phase I for this site while the third site investigation/remediation is active. CILCO has stated that at the present time it has no remediation responsibility at the fifth site.

CILCO also presented estimated investigation and remediation costs by MGP site for each year through 2004, as well as a range of total estimated remediation costs for each site.

The Staff witness testified that he reviewed the prudence of the costs incurred by CILCO for the reconciliation year 1999. As part of his analysis, the Staff witness examined responses to Staff data requests which contained additional information regarding the need for, and reasonableness of CILCO's MGP remediation activities and expenditures. These data requests were admitted into the evidentiary record. In performing the prudence review, Staff based its evaluation upon the prudence standards enumerated in the Commission's Order of September 30, 1992 in Docket Nos. 91-0080 through 91-0095 at 78-81, and on pages 2-3 above. Staff found no reason to find that any of the MGP remediation costs incurred by CILCO during the year ended December 31, 1999 failed to meet those standards of prudence, and recommended the Commission accept the Company's reconciliation.

The Commission has reviewed the evidence regarding the purpose, nature and scope of CILCO's MGP site remediation activities and expenditures for the 1999 reconciliation year. Based on the record herein, the Commission concludes that CILCO's expenditures in 1999 satisfy the prudence standards established in Dockets 91-0080 through 91-0095 (cons.) and were appropriate.

Findings and Ordering Paragraphs

The Commission, having given due consideration to the entire record herein, is of the opinion and finds that:

- 1) The Commission has jurisdiction of the parties and the subject matter herein;
- 2) the facts recited and determinations made in the prefatory portion of this Order are supported by the record, and are hereby adopted as findings of fact;
- 3) the reconciliation of CILCO's MGP site remediation costs and recoveries for the 1999 reconciliation year, as shown in CILCO Exhibit 1.1, Attachments 2 and 3, should be approved; more specifically, costs were \$1,509,735 for 1999; when costs (including carrying charges) of \$6,550,516 incurred through December 31,

1998 are included, cumulative expenses through December 31, 1999 are \$8,060,251;

- 4) recoveries for 1999 were \$1,435,591, and when under-recoveries as of December 31, 1999 for the 1998 under-recovery are included, cumulative recoveries as of December 31, 1999 were \$7,766,996, resulting in a total under-recovery for all periods through December 31, 1999 of \$293,255 to be collected through a reconciliation factor over the period April 1, 2000 through March 31, 2001 or such shorter period as necessary to trigger a Reconciliation Factor of .01 cents per therm or greater.

IT IS THEREFORE ORDERED that CILCO's proposed reconciliation of revenues and costs under Rider TAR, for the 12 month period ended December 31, 1999, as described in Finding Nos. 3 and 4 above, is hereby approved, subject to the terms and condition of the findings and other determinations made herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this ____ day of _____, 2001.

(SIGNED) RICHARD MATHIAS

Chairman